



In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ALVAH CROCKER ET AL., ETC., PETITIONERS, }
v.
JOHN F. MALLEY, COLLECTOR. } No. 649.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIRST CIRCUIT.

MOTION ON BEHALF OF RESPONDENT TO ADVANCE.

Comes now the Solicitor General, on behalf of the respondent, and respectfully moves that the above-entitled cause be advanced for hearing during the present term.

The case involves the liability of petitioners to an income tax for the years 1913, 1914, and 1915, amounting to about \$10,000, under certain provisions of the Income Tax Act of October 3, 1913, 38 Stat. 114, 166, 168, 169, 172.

Parts of paragraphs A, D, and G (a) of Section II of that act are the pertinent statutory provisions and are as follows:

A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every

citizen of the United States * * * a tax of 1 per centum per annum upon such income, except as hereinafter provided.

D. * * * guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals:
* * * *Provided further*, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided.

G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association * * * organized in the United States, no matter how created or organized, not including partnerships.

Petitioners constitute a common-law trust known as the "Wachusett Realty Trust," created in Massachusetts prior to the passage of the Income Tax Act. The property of the trust consists of real estate and

shares of stock in a Massachusetts corporation, the legal title to which is vested in the trustees, who have full management and control. The income is derived from the dividends on the stock and the rentals of the real estate. The trustees are authorized to collect the income and to pay to the beneficiaries such portion thereof receivable as they may "in their discretion determine to be fairly distributable net income." The interest of the beneficiaries is represented by receipt certificates issued by the trustees, which are to be taken to be personal property and which are transferable, new certificates being issued to evidence new or subdivided interests.

The question is as to which of the statutory enactments above quoted are applicable to petitioners. The District Court held that paragraph D, relating to fiduciaries, controlled, and that petitioners were taxable thereunder. The Circuit Court of Appeals for the First Circuit reversed the District Court, holding paragraph G (a) applicable, and declared petitioners liable for the entire amount involved.

The Treasury Department advises that the question here presented is involved in a number of other cases, and is important in fixing the tax liability of many other concerns. An early decision is therefore of importance to that department in its administration of the Income Tax Act.

ALEX. C. KING,
Solicitor General.

JANUARY, 1919.

